

Senate Bill No. 1043

CHAPTER 309

An act to amend Section 19442 of the Revenue and Taxation Code, relating to tax administration.

[Approved by Governor October 5, 2007. Filed with
Secretary of State October 5, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1043, Committee on Revenue and Taxation. The Personal Income Tax Law and the Corporations Tax Law: offers of settlement: evidence.

The Personal Income Tax Law and the Corporations Tax Law authorize the Franchise Tax Board to settle administrative civil tax disputes and provide that the executive officer and chief counsel, jointly, of the Franchise Tax Board may approve a settlement of any civil tax matter in a dispute involving a reduction of tax and penalties, as specified.

This bill would make any evidence of an offer of settlement made during settlement negotiations between a taxpayer and the Franchise Tax Board, or any statement made in pursuit of settlement, inadmissible, as provided, in any subsequent adjudicative proceeding, including any appeal to the State Board of Equalization.

The people of the State of California do enact as follows:

SECTION 1. Section 19442 of the Revenue and Taxation Code is amended to read:

19442. (a) It is the intent of the Legislature that the Franchise Tax Board, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive officer or chief counsel, if authorized by the executive officer, of the Franchise Tax Board may recommend to the Franchise Tax Board, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the Franchise Tax Board, itself, unless and until that recommendation has been submitted by the executive officer or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise in writing the executive officer or chief counsel of the Franchise Tax Board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive

officer or chief counsel shall, with each recommendation of settlement submitted to the Franchise Tax Board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) (A) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed seven thousand five hundred dollars (\$7,500), may be approved by the executive officer and chief counsel, jointly. The executive officer shall notify the Franchise Tax Board, itself, of any settlement approved pursuant to this paragraph.

(B) On January 1 of each calendar year beginning on or after January 1, 2004, the Franchise Tax Board shall increase the amount specified in subparagraph (A) to the amount computed under this subparagraph. That adjustment shall be made as follows:

(i) The Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index, as modified for rental equivalent homeownership for all items, from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(ii) The Franchise Tax Board shall then:

(I) Compute the percentage change in the California Consumer Price Index from the later of June 2003 or June of the calendar year prior to the last increase in the amount specified in subparagraph (A).

(II) Compute the inflation adjustment factor by adding 100 percent to the percentage change so computed, and converting the resulting percentage to the decimal equivalent.

(III) Multiply the amount specified in subparagraph (A) for the immediately preceding calendar year, as adjusted under this paragraph, by the inflation adjustment factor determined in subclause (II), and round off the resulting product to the nearest one hundred dollars (\$100).

(c) Whenever a reduction of tax or penalties or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file in the office of the executive officer of the Franchise Tax Board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the Franchise Tax Board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the Franchise Tax Board shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation. Any recommendation for settlement that is not either approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive officer or chief counsel in accordance with the decision of the Franchise Tax Board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the Franchise Tax Board. Where the Franchise Tax Board disapproves a recommendation for settlement, the matter shall be remanded to Franchise Tax Board staff for further negotiation, and may be resubmitted to the Franchise Tax Board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive officer or chief counsel.

(f) (1) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(2) A settlement may include matters that may otherwise be included in an agreement under Section 19441.

(3) Settlements pursuant to this section do not preclude assessments or refunds under Section 19059, 19060, or 19311 (relating to application of federal adjustments).

(g) (1) Any proceedings undertaken by the Franchise Tax Board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(2) Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7.

(3) Notwithstanding any other provision of law, no evidence of an offer of settlement made during settlement negotiations is admissible in any adjudicative proceeding or civil action, including, without limitation, any appeal to the board, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements related to the settlement negotiations is admissible to prove liability for any tax, penalty, fee, or interest, except to the extent provided for in Section 1152 of the Evidence Code.

(4) A settlement approved by the Franchise Tax Board, itself, shall be final and conclusive, to the same extent as an agreement under Section 19441 approved by the Franchise Tax Board, itself.

(h) This section shall apply only to civil tax matters in dispute existing on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented.

Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the Franchise Tax Board in implementing and administering the settlement program authorized by this section.

(j) The amendments made to this section by Section 1 of Chapter 258 of the Statutes of 2002 shall apply to any settlements approved on or after January 1, 2003.

(k) The amendments made to this section by the act adding this subdivision shall apply to any settlement negotiations entered into on or after the date of enactment, without regard to a taxable year.